

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICARDO A. FERNANDEZ,

Defendant.

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CASE NO. 8:09CR92

**MEMORANDUM
AND ORDER**

This matter is before the Court on the Defendant's objections (Filing No. 72) to the Magistrate Judge's order (Filing No. 69) denying the Defendant's motion to continue trial or, in the alternative, for transportation, subsistence and lodging (Filing No. 68).

Under 28 U.S.C. § 636(b)(1)(A) and NECrimR 59.2, the Court has reviewed the order from which this appeal has been taken. A district court may set aside any part of the magistrate judge's order shown to be clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A).

The Defendant's reason for the requested continuance is that he is short of funds to travel from California to Nebraska on "short" notice. When the Defendant was placed on release, he was aware that he would have to travel to Nebraska for court appearances. He has not had to appear in court since his release order was entered. In light of his indigent status, however, the Court will order that the Defendant receive compensation for noncustodial transportation to Nebraska and for "subsistence." Reimbursement for lodging is not authorized. Defense counsel did not state when the Defendant should arrive in Omaha. The Court will order that he arrive in Omaha on Sunday, May 2, 2010.

Judge Gossett's order regarding the request for a continuance is not clearly erroneous or contrary to law. However, Judge Gossett did not address the request for transportation, etc.

Accordingly,

IT IS ORDERED:

1. The Defendant's objections to the Magistrate Judge's order (Filing No. 72) are denied with respect to the continuance and granted with respect to the request for transportation and subsistence;
2. The Magistrate Judge's order (Filing No. 69) denying the Defendant's motion to continue trial (Filing No. 68) is affirmed with respect to that issue; and
3. A separate order allowing noncustodial transportation and subsistence will be entered.

DATED this 29th day of April, 2010.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge